IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4154 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SMT. SUSHILABEN AMRUTLAL THACKER & 2 - Appellant(s)
Versus
KASHMIRSINGH KARTARSINGH SHIKH & 3 - Defendant(s)

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Appearance :
MR MEHUL S SHAH for Appellant(s) : 1 - 3.
MR SURESH M SHAH for Appellant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 17th December, 2005 passed by the Motor Accident Claims Tribunal, Kachchh at Bhuj in MACP No.670 of 1999. The appeal is filed by the original claimants for enhancement of compensation amount awarded by the Tribunal at Rs.7,08,840 even after holding that the deceased - driver of the Maruti Car involved in the accident with a Tanker, was negligent to the extent of 10 per cent.

2. The deceased was serving in BSNL and his gross salary on the date of the accident was Rs.9661 including all allowances. After deductions, the Tribunal assessed the net income of the deceased at Rs.7000 per month. Deducting one-third amount therefrom as the personal expenditure of the deceased, the dependency benefit was assessed at Rs.4600 per month i.e. Rs.55,200 per annum. Although the deceased was aged 49 years on the date of the accident, the Tribunal applied multiplier of 13 years and on that basis computed compensation for loss of dependency at Rs.7,17,600. The Tribunal also added substantial amounts under different heads of conventional amounts as under:

Rs.7,17,600.00	for loss of dependency
Rs. 30,000.00	for loss to estate
Rs. 25,000.00	for loss of consortium
Rs. 5,000.00	for transportation

Rs. 10,000.00	for funeral expenses.

Rs.7,87,600.00	Total compensation
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As the deceased was held negligent to the extent of 10 per cent, the Tribunal made award for compensation of Rs.7,08,840.

3. On the date of the accident in the year 1999, the widow was 43 years old, son of the deceased was 21 years old and daughter of the deceased was aged 19 years. This appeal is filed by the said claimants for enhancement of compensation.

4. Mr.Mehul Suresh Shah, learned advocate for the appellants, has submitted that the Tribunal has erred in assessing the income of the deceased at only Rs.7,000/- per month when the income was Rs.9661/- on the date of the accident and as per the certificate issued by the Departmental Officer, the gross salary of the deceased would have gone up to Rs.14,365/- at the time of his retirement in December 2009. It is further submitted that the claimants had produced documentary evidence in support of their case that apart from the regular employment with BSNL, the deceased was rendering his services as a part-time consultant to a land developer called Purvi Estate Agency and was earning Rs.5,000/- per month. It is, therefore, submitted by Mr.Shah that the Tribunal ought to have assessed the income of the deceased at

Rs.15,000/- per month on the date of the accident and prospective income at Rs.22,500/- per month.

5. Before considering the above submissions as regards the actual and prospective income of the deceased, it would be necessary to point out that even though the deceased was aged 49 years on the date of the accident, the Tribunal adopted multiplier of 13 years which is beyond even the date of retirement of the deceased. As per the settled legal position, while determining multiplier, the Tribunal has to take into account the remaining years of employment and also various imponderables. In other words, if the deceased aged 49 years had 11 more years of service before retirement, multiplier would have to be less than 11 and cannot be more than the actual service of 11 years. In this case, the Tribunal adopted multiplier of 13 years. We will revert to this aspect after considering the submissions made by the learned counsel on the question of income of the deceased.

6. Even as per the claimants' case, gross salary of the deceased in April 1999 was Rs.9961 including all allowances and his gross salary including all allowances at the time of his retirement in December 2009 would be Rs.14,365/-. Deducting at least the income tax which would have been payable by the deceased even at the current rates of income tax, net salary of the deceased on the date of the accident could not have been more

than Rs.9,000/- per month and Rs.13,000/- per month on the date of retirement. Aggregating these two figures at Rs.22,000/- and dividing it by half as per the usual formula, prospective income of the deceased can be taken at Rs.11,000/- per month. There were in all four family members including the deceased and, therefore, the submission of Mr.Shah for the appellants-claimants that only one-fourth amount should be deducted as personal expenditure of the deceased cannot be even countenanced.

Reducing net prospective income of the deceased by one-third towards personal expenditure of the deceased dependency benefit works out to Rs.7300/- per month i.e. Rs.88,000/- per annum.

Since the deceased was aged 49 years and had maximum of 10 years service before retirement, even taking a liberal view, multiplier cannot be more than 8 years. Accordingly compensation for loss of dependency benefit would work out to Rs.88,000 x 8 = Rs.7,04,000/-.

7. At this stage, we may consider the submission of Mr.Shah that the deceased was rendering services as a part-time consultant and was earning Rs.5,000/- per month. Apart from the fact that the claimants merely produced a certificate purported to have been issued by an entity called Purvi Estate Agency, we are not inclined to take into account the said alleged income of the deceased for the purpose

of assessing and computing compensation for loss of dependency benefit. The deceased was an employee of BSNL which is a Government Corporation and we can take judicial notice of the fact that as an employee of a public undertaking, he could not have taken up any other employment nor even rendered services as a part-time consultant for monetary consideration. We have, therefore, not taken into account the alleged income of the deceased as a part-time consultant to a land development agency.

8. Coming to the conventional amounts awarded by the Tribunal, we find them to be on the higher side. Conventional amount for loss to the estate has so far not exceeded Rs.25,000/- nor conventional amount for loss of consortium exceeded Rs.15,000/-. Still the Tribunal has awarded Rs.30,000/- as conventional amount for loss to the estate and Rs.25,000/- for loss of consortium to the widow of the deceased. Ordinarily Rs.5,000/- is the sum being awarded towards funeral expenses and transportation. The Tribunal has, however, awarded Rs.10,000/- towards funeral expenses and Rs.5,000/- towards transportation charges. Though we may not be treated to have endorsed the above approach of the Tribunal, but even on demurrer proceeding on the basis that the above amounts could be awarded as conventional amounts under different heads, the total amount would not work out to more than Rs.7,87,600/- which is the sum determined by the Tribunal. Since the deceased was found to be negligent to the extent

of 10 per cent, the Tribunal has awarded compensation of Rs.7,08,840. The Tribunal has also awarded interest at the rate of 9 per cent per annum from the date of filing the claim petition (19.7.99) till realization.

9. In view of the above discussion, we do not find any scope for enhancement of compensation amount under any head. The appeal is, therefore, summarily dismissed.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)